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PUBLIC VERSION
REDACTED – FOR PUBLIC INSPECTION

May 10, 2019

VIA ECFS

Marlene Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***In re Iowa Network Access Division Tariff F.C.C. No. 1***
WC Docket No. 18-60; Transmittal No. 40

Dear Ms. Dortch:

On behalf of Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon"), transmitted herewith for filing in the above-referenced proceeding is a copy of the Public version of Aureon's Reply to the Petition to Reject or to Suspend and Investigate filed by AT&T in the above-referenced matter. On March 26, 2018, the FCC entered a Protective Order covering confidential materials submitted in this proceeding. Pursuant to the terms of the Protective Order, Aureon has designated certain information in its filing as Confidential, and all confidential information has been redacted in this filing. A Confidential version of the foregoing filing is being submitted contemporaneously via the Secretary's Office as required by the Protective Order.

Should there be any questions with respect to this submission, please contact the undersigned.

Respectfully submitted,

James U. Troup
Tony S. Lee

Counsel for Iowa Network Services, Inc.
d/b/a Aureon Network Services

FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Iowa Network Services, Inc. d/b/a Aureon Network Services Tariff F.C.C. No. 1.	WC Docket No. 18-60 Transmittal No. 40

REPLY OF IOWA NETWORK SERVICES D/B/A AUREON NETWORK SERVICES TO THE PETITION TO REJECT OR TO SUSPEND AND INVESTIGATE FILED BY AT&T CORP.

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d/b/a/ Aureon Network Services

Dated: May 10, 2019

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REJECT OR TO SUSPEND AND INVESTIGATE FILED BY AT&T CORP.

Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon"), pursuant to Section 1.773(b) of the Commission's rules,[1] hereby submits its Reply to the Petition to Reject or to Suspend and Investigate ("Petition") filed by AT&T Corp ("AT&T"). As further detailed below, the Petition should be denied.

I. INTRODUCTION AND SUMMARY

As an initial matter, it is important to note that the Commission ruled for the first time in its November 2017 *Referral Order*[2] that Aureon was a competitive local exchange carrier ("CLEC") subject to the FCC's non-dominant CLEC rate benchmark rules in Section 61.26. Aureon does not agree that a dominant carrier like Aureon, which is regulated under Section 61.38, can also be regulated as a non-dominant CLEC. However, if Aureon is a CLEC, Aureon is permitted to charge the CLEC benchmark rate without filing any cost studies because a CLEC's access rates are "conclusively presumed to be just and reasonable" if the rates are at or

[1] 47 C.F.R. § 1.773(b).

[2] *AT&T Corp. v. Iowa Network Services, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd. 9677, 9690, ¶ 25 (2017) ("*Referral Order*").

below the benchmark.[3] The FCC determined that the CLEC benchmark rate for Aureon is $0.005634.[4] Aureon's proposed per-minute CEA tariff rate of $0.00363 is less than the CLEC rate benchmark of $0.005634 calculated by the FCC. As such, Aureon's proposed tariff rate is less than the applicable CLEC benchmark rate, and therefore, conclusively deemed just and reasonable. For this reason alone, should the FCC decide to continue to regulate Aureon as a CLEC, the FCC should deny AT&T's Petition. No other CEA providers, which are also presumably CLECs, are required to file cost studies. Rather, they are permitted to file rates that are at or less than the applicable benchmark rate, and therefore their rates are conclusively deemed just and reasonable, and therefore, deemed lawful. There are no valid reasons for treating Aureon differently than any other CEA provider.

Nonetheless, as required by the FCC's *Second Rate Order* issued on February 28, 2019,[5] Aureon filed its revised proposed tariff rate on April 29, 2019, which increased its centralized equal access ("CEA") switched transport rate from $0.00296 to $0.00363 per minute of use. This rate is prospective only, and unless its effective date is deferred, would apply to CEA traffic routed over Aureon's network on or after May 14, 2019. Aureon calculated its new rate based on available and forecasted data for 2019 (Aureon's test year) for each of its pertinent allocators. Specifically, Aureon used DS-3 circuit counts as a prime allocation factor as required by the

[3] *Access Charge Reform, et al.*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9938, ¶ 40 (2001).

[4] *In re Iowa Network Access Division Tariff F.C.C. No. 1*, Memorandum Opinion and Order, WC Docket No. 18-60, Transmittal No. 36, FCC 18-105, 33 FCC Rcd. 7517 ¶¶ 35, 43 (2018) ("*First Rate Order*").

[5] *In re Iowa Network Access Division Tariff F.C.C. No. 1*, Memorandum Opinion and Order, WC Docket No. 18-60, Transmittal No. 38, FCC 19-14, 2019 WL 1010709 (rel. Feb. 28, 2019) ("*Second Rate Order*").

FCC. In conjunction with this process, an updated complete circuit inventory was conducted by Aureon and included in the tariff filing.

Also as required by the *Second Rate Order,* Aureon provided, among other things, complete cost support and explanatory materials; a comprehensive and well-defined database of third-party sales for DS-3 transport service, and an explanation of how this information should inform the calculation of fair market value in evaluating the Filed Lease Expense for the lease rate provided by the Network Division to the Access Division; and applied a reasonable methodology to convert its inventory of Ethernet circuits to physical rings so that a proper number of ring-miles can be allocated to the Ethernet circuits (and, thus, to nonregulated activity).[6] The cost support also properly allocates cable and wire facilities ("CWF") between CEA service and other services, (i.e.: regulated and nonregulated activities) based on Part 64 allocation principles. Aureon has complied with the FCC's *Second Rate Order*, and its proposed rate is fully supported. Accordingly, AT&T's arguments that Aureon's tariff rate should be rejected or suspended and investigated are without merit, and therefore, AT&T's Petition should be denied.

II. ARGUMENT

A. Contrary to AT&T's Assertions, Aureon Filed a Revised Tariff Rate as Required by the *Second Rate Order* and Section 61.38 of the FCC's Rules.

AT&T asserts that Aureon's tariff filing should be rejected, or suspended and investigated, because Aureon has allegedly filed a "new tariff" rather than a "revised tariff" as required by the *Second Rate Order*. AT&T avers that because the FCC is in the "middle of a rate

[6] *Id.* at ¶¶ 13, 18, 35.

proceeding",[7] Aureon should have set its CEA rate at "the level at which it should have been tariffed as of March, 2018."[8] AT&T is wrong. As further discussed below, the FCC did not order Aureon to file a retroactive rate effective as of March 2018. Rather, Aureon filed a revised tariff rate with the necessary cost support and further information as required by the FCC's order and Section 61.38 of the FCC's rules to support a prospective rate effective May 14, 2019.

First, contrary to AT&T's contentions, the FCC is not in the middle of a rate proceeding. The *First Rate Order* made clear that the FCC's investigation of Aureon's March 2018 tariff rate is over. Specifically, paragraph 127 of the FCC's *First Rate Order* "ORDERED that the investigation initiated in WC Docket No. 18-60 IS TERMINATED."[9] The FCC terminated its investigation of Aureon's September 2018 tariff rate using similar language.[10] Given that the FCC clearly ended its investigations of Aureon's $0.00576 March 2018 tariff rate, and Aureon's $0.00296 September 2018 tariff rate, there is no merit to AT&T's claim that Aureon should have filed cost support relevant to Aureon's March 2018 tariff rate. The cost support and traffic projections filed by Aureon are for a prospective rate that will be in effect from May 14, 2019 until July 1, 2020. That rate will not apply retroactively to cover CEA traffic from March 2018.

Second, the FCC directed Aureon to file a revised tariff rate "[c]onsistent with our rules" and with "complete cost support and explanatory material".[11] Aureon is a dominant carrier

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[7] AT&T Petition at 8-9 ("Aureon [has not] offered any legal justification for radically altering its tariff filing in the middle of a rate proceeding.")

[8] *Id.*

[9] *First Rate Order* ¶ 127 (capitalization original).

[10] *Second Rate Order* ¶ 40.

[11] *Id.* ¶ 13.

subject to Section 61.38 of the FCC's rules.[12] For dominant carrier tariff changes, that section states, in relevant part:

> (b) Explanation and data supporting either changes or new tariff offerings.
>
> * * *
>
> (1) For a tariff change the issuing carrier must submit the following, including complete explanations of the bases for the estimates.
>
> (i) A cost of service study for all elements for the most recent 12 month period;
>
> (ii) A study containing a projection of costs for a representative 12 month period;
>
> (iii) Estimates of the effect of the changed matter on the traffic and revenues from the service to which the changed matter applies, the issuing carrier's other service classifications, and the carrier's overall traffic and revenues. These estimates must include the projected effects on the traffic and revenues for the same representative 12 month period used in (b)(1)(ii) above.[13]

As ordered by the FCC,[14] Aureon filed a revised CEA rate effective May 14, 2019 utilizing "a cost of service study for all elements for the most recent 12 month period", i.e., 2018. **[[BEGIN CONFIDENTIAL]]**

[[END CONFIDENTIAL]] Aureon utilized 2017 as the base year for its financial data, and then updated that information with current data for 2018. Aureon's financial information is representative of Aureon's 2018 costs, and were adjusted to include three quantifiable and known items – Aureon's new switch investment cost, traffic volumes, and circuit inventory. As required by Section 61.38(b)(1), Aureon utilized a 2019 test

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[12] 47 C.F.R. § 61.38.

[13] 47 C.F.R. § 61.38(b)(1)(i) – (iii).

[14] *Id.* ¶ 39 ("Aureon SHALL FILE REVISED rate(s) in its Tariff F.C.C. No. 1, as described in this Order, no later than 60 calendar days from the release date of this Order." (capitalization original)).

year to calculate its most recent proposed tariff rate, which will be effective from May 14, 2019 until July 1, 2020. There is no use of inconsistent data sets from different time periods as alleged by AT&T because Aureon used (1) "a cost of service study for all elements for the most recent 12 month period, i.e., 2018; (2) "a study containing a projection of costs for a representative 12 month period", i.e., the 2019 test period; and (3) "estimates of the effect of the changed matter on the traffic and revenues from the service to which the changed matter applies, the issuing carrier's other service classifications, and the carrier's overall traffic and revenues", which again is the 2019 test period.

Third, Aureon's traffic projection for the 2019 test period would not result in Aureon earning an excess return on its CEA rate because Aureon's proposed CEA tariff rate of $0.00363 is targeted to earn the rate of return authorized by the FCC and is prospective only for traffic routed by interexchange carriers ("IXCs") over the CEA network after May 14, 2019. The revised tariff rate would not apply retroactively to any traffic before that date. Furthermore, Aureon's traffic projection is consistent with the overall decline in traffic experienced on the CEA network. **[[BEGIN CONFIDENTIAL]]**

[[END CONFIDENTIAL]] Aureon has no way to determine the amount or the extent of the bypass as Aureon does not have the ability to monitor the traffic of other carriers to enforce the FCC's mandatory use policy for CEA service.[15]

Fourth, Aureon's CEA customers are not being required to pay for switch investment by way of CEA rates applied to 2018 traffic.[16] Contrary to AT&T's assertion, the tariff at issue in this case is not Aureon's March 2018 tariff rate.[17] The FCC has already concluded its investigation of that rate. The tariff rate at issue here is the $0.00363 rate filed by Aureon in Transmittal No. 40. As further discussed below in Section II.B, and in Aureon's Description and Justification,[18] Aureon's new switch investment satisfies the FCC's "used and useful" standard

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[15] AT&T disingenuously asserts that "the Commission has not found that there is currently a mandatory use rule" for CEA service. AT&T Petition at 12 n.12 (citations omitted). This is false as the FCC has specifically acknowledged the existence of the mandatory use policy. "In the order authorizing CEA provider Aureon, *the Commission established the mandatory use policy*, permitting CEA providers to require IXCs to connect to LECs that subtend a CEA provider indirectly through such CEA providers' tandem switch rather than indirectly through another intermediate provider or directly to the subtending LEC." *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Notice of Proposed Rulemaking, 33 FCC Rcd. 5466 n.28 (2018) (emphasis added) (citing *Application of Iowa Network Access Division*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd. 1468, 1472-73 ¶¶ 28-33 (1988)). AT&T further asserts that over time, carriers have elected to avoid routing traffic over Aureon's CEA network as a result of Aureon's allegedly inflated rates, and that Aureon's traffic should increase as its rates decrease. AT&T Petition at 12 n.12. However, the empirical data shows that this is clearly not the case. In June 2013, Aureon's per minute-of-use ("MOU") CEA rate was $0.00896. Aureon reduced its CEA rate to $0.00576 per MOU on February 22, 2018, and yet again to $0.00296 on September 24, 2018. **[[BEGIN CONFIDENTIAL]]**

[[END CONFIDENTIAL]] The actual traffic volumes speak for themselves, and Aureon's traffic projections merely follow the traffic trends established by real-world data.

[16] AT&T asserts that Aureon's CEA customers in 2018 will be required to pay for Aureon's switch investment. AT&T Petition at 11. That is plainly incorrect as Aureon's proposed rate will not be applied retroactively. It will only be applied prospectively effective May 14, 2019.

[17] AT&T Petition at 11 (Aureon's new switch will not go into service "a full two years after the tariff that is at issue in this proceeding first went into effect.").

[18] *See* Aureon Description and Justification at 5-7.

to evaluate whether particular investments can be included in a carrier's revenue requirement. AT&T does not dispute that Aureon's 1980's vintage equipment is old and outdated, and needs to be replaced. The new switching equipment is expected to be put into service within 11 months of Aureon's April 2019 revised tariff filing, and not two years as asserted by AT&T. Aureon's CEA customers in 2019 and 2020, and not Aureon's 2018 customers, will pay the tariff rate that will recover the costs of the new switch investment.

Fifth, pursuant to Section 61.54 of the FCC's rules, Aureon's submission is a revised tariff filing, and not a new tariff filing.[19] That section distinguishes between a revised tariff filing verses a new tariff filing by requiring the appropriate designations to be included on filed tariff pages. Revised tariff pages are designated by the revision number, whereas new tariff pages are designated as an "original" page. Aureon Transmittal No. 40 including a revised tariff rate on "15th Revised Page 145", which cancelled "14th Revised Page 145". The FCC rules clearly set forth the procedures for filing revised tariff pages, and new tariffs and new tariff pages, and, notwithstanding the substantive issues discussed above, from a procedural standpoint, Aureon's filing is a revised tariff rate that complies with the *Second Rate Order* and the FCC's rules, and not a new tariff filing.

There is no basis to AT&T's allegations that Aureon has filed a new tariff rate that applies retroactively to 2018 traffic, that, among other things, Aureon's seeks to force IXCs to pay for costs that are unjustified, or that Aureon's CEA rate is inflated because it applies 2019

[19] 47 C.F.R. § 61.54.

traffic projections rather than 2018 traffic projections. Aureon's proposed rate applies to 2019 and 2020 traffic, and as such, the data Aureon used for its cost and traffic studies are appropriate.

B. Aureon's Switch Investment Costs Meet the FCC's "Used and Useful" Standard, and Therefore, Those Amounts are Appropriately Included in Aureon's Revenue Requirement.

AT&T does not dispute that there is a critical need to replace Aureon's switch due to its extremely old age and outdated technology. AT&T also does not dispute that because Aureon's switch was manufacturer discontinued in 2016, and that no new hardware is available from the vendor, that it is prudent and necessary for Aureon to replace its central access tandem switching equipment before there is a catastrophic failure resulting in widespread service outages to more than 300,000 customers throughout rural Iowa. Nonetheless, AT&T asserts that it is improper for Aureon to include the $4.4 million switch investment in its rate calculation because Aureon has purportedly not explained the basis for the $4.4 million estimate, or provided any documentation showing that it has purchased or recently sought bids for the equipment. Aureon has provided appropriate information to the Commission demonstrating that its $4.4 million switch investment satisfies the "used and useful" standard.

First, Aureon previously provided documentation to the Commission to support its $4.4 million estimate for the switch replacement project in the FCC's second tariff investigation proceeding.[20] That information provided support for the $4.4 million estimate through, among other things, vendor quotes for the equipment, and documentation showing the purchase of the building to house the new switching facility. Aureon provided updated information in its April 29, 2019 tariff filing regarding its construction progress, and explained that Aureon expects

[20] *See* Aureon Rebuttal, Exhibit A, Supp. Decl. of Pat Vaughan, WC Docket No. 18-60 (filed Dec. 12, 2018).

installation and commissioning of the new switching infrastructure equipment to occur in January 2020, training and the start of transitioning to the new switch environment to take place in February 2020, with all renovations and final validation processes completed by March 1, 2020.[21] Although AT&T contends that Aureon did not state whether and to what extent its CEA customers' traffic will be processed by this new switching equipment, AT&T is incorrect. In its Description and Justification, Aureon stated as follows:

> [T]he old switch will need to be kept operational simultaneously [with the new switch] for a limited period of time to migrate all subtending LECs to the new switch. During the migration of the 200 subtending LECs to the new switch, which is expected to take two or more years, both the old and the new switching environments will be used. The reason both the new and legacy switches need to be kept operational during the migration is that the subtending LECs cannot all be flash-cut to the new switch at once.

Thus, it is clear from Aureon's explanation that the new switch will be used in conjunction with the old switch during the service migration period, after which time, the new switch will handle all of the CEA traffic once the legacy equipment is decommissioned.

Second, AT&T asserts that Aureon's switch investment information is incomplete because Aureon did not address or make any adjustments to its rate calculation to take into account the impact the new switching equipment would have on its other investments or its operating expenses. Aureon decided not to make those adjustments because that would only result in an increase to Aureon's CEA rate. Any future operational expenses as a result of the new switching environment would likely increase due to increased vendor fees for the new switch and other expenses related to the operation of the new switch. Moreover, the need to operate both the old and new switches simultaneously during the switch migration period would also likely require an increase in operational costs, which Aureon decided not to include in its

[21] Aureon Description and Justification at 7.

projections. If anything, Aureon's decision not to make any adjustments favors IXCs like AT&T because Aureon's CEA rate would not need to be increased to reflect those additional costs.

Third, as discussed in Aureon's Description and Justification, the switch investment cost can be included in Aureon's revenue requirement even if the equipment has not yet been purchased. The purchase of Aureon's new switching equipment is imminent, and Aureon expects the equipment to be ordered at the end of 2Q 2019 or during 3Q 2019 in order for the equipment to be manufactured and delivered in time for installation and operation by March 1, 2020. The FCC applies the "used and useful" standard to evaluate whether particular investments can be included in a carrier's revenue requirement. Property is considered "used and useful" for regulatory ratemaking if it is "necessary to the efficient conduct of a utility's business, presently or within a reasonable future period."[22]

In determining whether property is "used and useful," the Commission considers (1) the need to compensate the utility's owners for the use of their property in providing public service; (2) the equitable principle that ratepayers, in this case, the interexchange carriers that use CEA service, should not be forced to pay a return except on investments that can be shown to benefit them; and (3) whether a carrier's investment was prudent, and whether the benefit from the investment will be realized in a reasonable period of time.[23] As further detailed in Aureon's

[22] *American Telephone and Telegraph Company, the Associated Bell System Companies, Charges for Interstate Telephone Service, AT&T Transmittal Nos. 10989, 11027, 11657*, Phase II Final Decision and Order, 64 FCC 2d 1, 38, ¶ 111 (1977) ("*AT&T Phase II Order*").

[23] *Id.* ¶ 111-113. The benefit to the long distance carriers that use CEA service does not have to be immediate, and can include, for example, a portion of equipment that is serving as a reserve for future use. *See, e.g., Investigation of Special Access Tariffs of Local Exchange Carriers*, FCC 86-52, 1986 WL 291617, ¶ 41 (1985), *remanded on other grounds*, *MCI Telecom. Corp. v. FCC*, 842 F.2d 1296 (D.C. Cir. 1988).

Description and Justification, all three elements of the Commission's used and useful standard are met, thus warranting inclusion of Aureon's switch investment in its cost study.[24]

C. Aureon's Traffic Study is Supported by Current, Actual Data.

As AT&T concedes, the FCC found that Aureon's prior traffic forecasts were reasonable because, among other things, Aureon's demand forecast was "reasonably consistent with its actual demand for the first four months of its test year."[25] Aureon used the same methodology to project future traffic demand for the 2019 test year, using actual traffic data for 2018 and the first three months of 2019. Nonetheless, AT&T asserts that Aureon's demand forecast is flawed because Aureon allegedly filed a new rate rather than a revised rate, excluded 2017 traffic data, and used actual MOUs.[26] AT&T is wrong for several reasons.

First, AT&T incorrectly presumes that Aureon's tariff filing is for a retroactive rate effective from March 2018. As discussed above, the FCC's investigation of Aureon's March 2018 tariff rate is over, and the FCC ordered Aureon to file a revised rate consistent with the principals established by the FCC's prior decisions. In its April 2019 tariff filing, Aureon proposed a revised prospective rate utilizing 2019 as the test year, which is required by Section 61.38(b)(1) of the FCC's rules. Aureon was not required to "correct its existing tariff submission" as asserted by AT&T because historical tariff rates cannot be revised retroactively and the FCC's investigations of Aureon's prior rates are over. Rather, Aureon was required to revise its rate prospectively, which necessitated the use of 2019 as the test year, rather than 2018 as argued by AT&T.

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[24] Aureon Description and Justification at 6.

[25] *First Rate Order* ¶ 101.

[26] AT&T Petition at 35.

Second, there is no requirement for Aureon to use 2017 traffic data in its traffic projection as the basis for its demand forecast for 2019. The prior tariff filings made by Aureon included 2017 traffic data because the test year for those filings was 2018. Now that 2018 is over, the new test year is 2019, and it would not make any sense to include 2017 traffic data, which is now two years old, in Aureon's 2019 traffic forecast. Because the instant tariff filing has advanced one year from Aureon's March 2018 tariff filing, Aureon's data utilized in its cost study is also advanced by one year. Further, AT&T incorrectly asserts that Aureon continues to use 2017 financial data in its rate calculation. As explained above, Aureon's 2017 financial data was the starting point for the financial inputs in Aureon's cost study. However, that information was updated with current data for 2018. Aureon's financial information is representative of Aureon's 2018 costs, and were adjusted to include Aureon's new switch investment cost, traffic volumes, and circuit inventory.

Third, Aureon appropriately used actual data from the first three months of 2019 to project demand for the remainder of the year. AT&T avers that the use of actual MOU data to "backcast its rates for the same period is no 'projection' at all."[27] AT&T's argument is nonsensical as Aureon did in fact project future demand for the remainder of 2019 based on actual data that Aureon had on hand. The FCC determined that Aureon's use of data from the beginning of the test year to project demand for the remainder of the year was reasonable, and leads to more accurate results. It is important to note that Aureon did not perform a "regression analysis" to project 2019 traffic volumes as asserted by AT&T.[28] Rather, the linear trend line

[27] AT&T Petition at 35.

[28] *Id.* at 36.

shown on Aureon's projection is created by the graphing function built into the software, and is used by Aureon to determine reasonableness of its future projections.

D. Aureon's Fair Market Value Analysis Complies with the FCC's Rules and the *Second Rate Order*.

1. The Third Party DS-3 Lease Database

In the *Second Rate Order*, the FCC determined that while Aureon submitted several estimates of fair market value of its leased network, Aureon could not completely ignore sales of non-regulated DS-3 transport to third parties because those services were similar, though not identical in important ways, to CEA transport services.[29] The FCC also determined such information might help establish a baseline for the fair market value of its CEA transport service, even if the fair market value might need to be adjusted upwards to account for the superior features of the CEA transport services.[30] To that end, the Commission directed Aureon to provide a database of third-party sales for DS-3 transport service,[31] which Aureon provided and filed under seal due to the proprietary nature of the customer information contained in the database.

AT&T complains that Aureon has not provided a detailed service description for each of its DS-3 circuits. While Aureon provides additional information below, it is not necessary to compare the features of Aureon's CEA transport service to third party DS-3 leases for purposes of Aureon's fair market value estimate because Aureon did not make any upward adjustments to the rates for the unregulated DS-3 leases, even though such adjustments might be warranted.

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[29] *Second Rates Order* ¶ 14. Contrary to AT&T's assertion, the Commission did not reject Aureon's fair market analysis. AT&T Petition at 13. Rather, the FCC found that Aureon could not completely ignore third party DS-3 sales in its fair market analysis.

[30] *Second Rate Order* ¶ 16.

[31] *Id.* ¶ 18.

The fair market rate estimate performed by Aureon using the third party DS-3 leases is a straight forward calculation using the actual DS-3 lease rates without any further alterations.

It is important to note that Aureon's circuit and billing databases were never designed to produce the information the FCC has requested. Aureon's databases were designed to track and maintain circuits – not to identify the amounts customers paid for portions of a circuit. **[[BEGIN CONFIDENTIAL]]**

[[END CONFIDENTIAL]]

2. The Approaches Used by Aureon to Make a Fair Market Value Estimate for the CEA Lease Rate are Valid.

AT&T mischaracterizes the analysis performed by Aureon regarding the third party DS-3 lease rates.[32] The affiliate transaction rules require affiliate charges to be lower than fully distributed cost or fair market value – whichever is less. The FCC required Aureon to provide a fair market value estimate for CEA DS-3 transport service based on non-CEA DS-3 lease rates charged to unrelated third parties, and then compare that fair market value estimate to the costs assigned to CEA DS-3 lease circuits. Aureon has done this using two different approaches, and indeed, the CEA assigned costs are lower than the third party lease rates and fully distributed costs.

AT&T argues that the per-circuit market value comparison is flawed for several reasons. First, AT&T contends that [[**BEGIN CONFIDENTIAL**]]

[32] AT&T Petition at 13-18.

[33] *Id.* at 15.

[[END CONFIDENTIAL]] In contrast, Aureon provides CEA service to IXCs on a per-minute basis, and the amount billed each month to an IXC varies depending on the carrier's monthly MOUs. **[[BEGIN CONFIDENTIAL]]**

[[END CONFIDENTIAL]]

Next, AT&T argues that Aureon **[[BEGIN CONFIDENTIAL]]**

[[END CONFIDENTIAL]] AT&T is incorrect. The FCC directed Aureon to assess the level of lease expense assigned to CEA compared to the amounts charged to third parties for DS-3 transport service, even though such service is not comparable to CEA DS-3 transport service. AT&T contends that Aureon's methodologies are flawed because **[[BEGIN CONFIDENTIAL]]**

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[34] *Id.* at 16.

[35] *Id.*

[[END CONFIDENTIAL]] Aureon has complied with the FCC's requirement to compare representative third party revenues per non-CEA DS-3 with the lease revenues applied to CEA DS-3s that drive the revenue requirement used in this tariff rate development.

Finally, AT&T contends that none of the regulated services cited by Aureon are directly comparable to the DS-3 capacity leased by the Access Division for use in the provision of CEA service, and therefore, the services of other carriers cannot serve as a basis for a fair market value estimate for CEA transport service.[37] Since the beginning of this process, Aureon has argued that the transport of IXC traffic across the CEA network does not have a readily found market comparable. However, in a good faith effort to validate the internal lease charge, (along with the determination of the fully distributed cost of the facilities used) Aureon has utilized numerous market comparisons, including the most recent comparison discussed above. None of those

[36] **[[BEGIN CONFIDENTIAL]]**

[[END CONFIDENTIAL]]

[37] AT&T Petition at 18.

comparisons show a fair market value estimate for CEA transport service that is lower than the allocated lease expenses.

AT&T cites the updated SDN rate filed on April 5, 2019, and avers that Aureon should have used the new SDN rate as a comparable for Aureon's revised rate – notwithstanding that AT&T has previously argued that it is inappropriate for Aureon to use SDN's rates to determine the fair market value of Aureon's CEA transport lease rate. SDN's revised rate is inapt because the required comparison is only for the lease expense that is included in the revenue requirement, and not the total revenue requirement, which also includes switching equipment and corporate overheads. Moreover, when SDN's previous rate ($0.005122/min) is updated to $0.002288, and applied to the CEA minutes of 1,403,273,249, the result is $3,210,689, which continues to be above the lease charge to the CEA revenue requirement by $813,251.

E. Aureon's Cost Study is Fully Supported, its Circuit Inventory is Accurate.

1. Aureon has not "Furtively Concealed" any Information Regarding Third Party Leases

AT&T asserts that Aureon's third party lease data appears to confirm that Aureon "furtively concealed" the extent of the third party leases on its network.[38] AT&T's allegations are baseless.

First, **[[BEGIN CONFIDENTIAL]]**

[[END CONFIDENTIAL]] As Aureon has previously explained, the service that is provided by the Network Division to the Access Division is "CEA Transport Service," which enables the Access Division to access all 2,700 miles of the CEA network to

[38] AT&T Petition at 19.

route calls to all 200 of the LECs that subtend Aureon's CEA network.[39] In contrast, the services that the Network Division provides to third parties are not "CEA Transport Service" because, among other things, those services do not provide access to the entire CEA network, and would not enable third parties to connect to all 200 of the LECs that subtend Aureon's network.[40] Rather, the service those parties receive are point-to-point services that only enable them to route traffic from one discrete location to another, or are for a purpose completely different from CEA service.[41] **[[BEGIN CONFIDENTIAL]]**

[[END CONFIDENTIAL]]

Second, there are no material discrepancies in Aureon's third-party lease data. **[[BEGIN CONFIDENTIAL]]**

[39] Aureon Second Direct Case at 8.

[40] *Id.*

[41] *Id.*

[[END CONFIDENTIAL]]

2. Aureon's Fully Distributed Cost Study is Properly Supported.

In AT&T's Petition, AT&T states that with regard to the allocation of Cable and Wire Facilities ("CWF") associated with Ethernet Circuits, "after the ring-mile allocation, Aureon continues to treat Ethernet Rings as having the equivalent of only one 'DS-3 circuit' on each circuit."[43] This statement demonstrates a lack of understanding of how the CWF allocation

[42] *See* Section II.D.1, *supra*, for a description of the database creation process.

[43] AT&T Petition at 30.

formula functions. The first level of allocation for both CWF and Central Office Equipment ("COE") is based on the total quantity of "Ring Miles" (for CWF Allocation) and "Rings" (for COE Allocation). As required by the FCC, Aureon does not "weight" these Ethernet rings based on DS-3 counts or DS-3 equivalents. Rather, each ring, either TDM or Ethernet, essentially count as "1", and the number of miles that ring travels similarly count only as "1 x miles". As all of the Ethernet rings are included in the 100% non-CEA Rings/Ring Miles category, they are only included in the first "layer" of allocations. The second layer (DS-3s) and third layer (DS-1s) are only used for "Joint and Common" facilities. Rings that have both CEA DS-3s and non-CEA DS-3s are allocated on the basis of these DS-3s (and related miles), and finally joint and common DS-3s are allocated on the basis of DS-1 counts. This change in methodology is in accordance with the FCC's directions in the *Second Rate Order*.

AT&T continues to describe the Filed Lease Expense as a "black box," and suggests that it is not appropriate for inclusion in Aureon's cost study. As the FCC ordered, the purpose of this tariff filing is to demonstrate that the CEA tariff rate satisfies the requirements of the FCC's affiliate transaction rule, which provides that the CEA transport lease rate provided by the Network Division to the Access Division must be less than fully distributed cost and fair market value. Aureon has demonstrated in this filing that the lease charge used is in fact lower than the fully distributed cost of the facilities used to provide the service, as well as the fair market value estimate. AT&T mistakenly claims that Aureon must justify not only the amount of lease expense assigned to CEA service, but all of Aureon's expenses, including transport expenses related solely to non-regulated services.[44] Such a comparison is completely irrelevant. The lease

[44] AT&T Petition at 31.

charge assigned to the CEA revenue requirement is the only relevant amount that needs to be justified using the fully distributed cost/fair market value metric, which Aureon has done.

AT&T also raises its previous argument that Aureon should use "sheath miles," rather than ring miles, in the CWF allocation.[45] Aureon's allocation methodology fully captures the relative use of the cable and wire facilities in question, and there is no need or requirement to contemplate alternative methods of allocation, especially those that would impose additional cost burdens on Aureon. Even if Aureon were to use sheath miles rather than ring miles, Aureon does not have the information to even determine the sheath miles associated with each ring. That determination would require a detailed study of its cable and wire facilities, and Aureon has never before undertaken this type of study. AT&T had previously argued that Aureon should use the sheath miles methodology, and the FCC declined to require Aureon do so in the *Second Rate Order.*

With regard to the COE Costs, AT&T states that "Aureon does not offer any explanation as to why there is such as large difference between Aureon's 'COE Lease Charge' and its 'Fully Distributed Cost for COE'." AT&T's point is moot because in this instance, the COE Lease Charge is substantially <u>below</u> the fully distributed costs for COE ($139,828 vs. $420,554, as shown on Lines B-1 and D-4 of the "Cost Market Comparison" Tab of the provided cost support). However, AT&T asserts that even this is inappropriate, despite the fact that the COE Lease Charge is clearly within the allowable parameters as discussed previously.

Aureon has updated its CWF allocation procedures by using "Ring Miles" as the first level of allocation, which eliminates the "weighting" based on DS-3 or DS-3 equivalents. This was required by the FCC in the *Second Rate Order*. No further changes were made to the CWF

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[45] AT&T Petition at 32.

or COE allocation methods as none were required by the FCC to be made, and indeed none are required to properly allocate these costs pools to CEA and Non CEA services based on the principles found in FCC Part 64 rules.

3. Aureon's Circuit Inventory is Accurate.

In response to the FCC's review of Aureon's 2018 tariff filings, Aureon undertook a completely new circuit inventory to serve as the basis for making "Part 64" like allocations between CEA and non-regulated services in connection with the ratemaking process. This inventory was initially completed in August 2018, and further updates were made in conjunction with the April 2019 filing at issue here.[46] Aureon's circuit inventory was an entirely new creation as the data utilized to compile the inventory existed only in scattered records located in disparate parts of the company. In addition, due to short time frames required by the FCC, as well as the limited network staff at Aureon, an external consultant was employed (Paul Nesensen from JSI) to oversee the process in cooperation with Pat Vaughn of Aureon. It is significant to note that each and every update of this inventory, and the allocation process that utilizes it, has resulted in a reduced cost allocation to CEA service.. Those allocations are summarized below:

[46] **[[BEGIN CONFIDENTIAL]]**

[[END CONFIDENTIAL]]

CEA Allocation Percentage

Filing:	COE	CWF
Original 2016	24%	71%
September, 2018	16%	25%
April, 2019	4%	13%

[[BEGIN CONFIDENTIAL]]

[[END CONFIDENTIAL]] These changes are improvements in the overall inventory process, and represent the most current, up-to-date inventory information that Aureon has available for the instant tariff filing. Moreover, these changes do not result in increases to Aureon's CEA allocation. In fact they have resulted in decreases in such allocation, which demonstrates Aureon's good faith effort to include and utilize the most current and accurate inventory information available.

4. Decreases in Traffic Volumes do not Require Decreases in Circuit Counts Because the Number of Circuits Needed is a Function of the Number of IXC Trunks Served, Rather than the Amount of Traffic Sent by the IXCs.

AT&T continues to argue that TDM circuits (i.e., DS-3s and DS-1s) associated with CEA service should show decreases in the number of circuits included in the Aureon network in conjunction with the reductions in minutes of use that are projected to be carried by the CEA network. AT&T further contends that the failure to reduce these circuits is an indicator that the costs incurred in installing and maintaining these circuits are not "used and useful" with regard to CEA services. AT&T's position is inconsistent with general industry practices and the real world practices of carriers such as AT&T.

First, AT&T currently has TDM connections via direct trunk transport to many rural LECs nationwide. In addition, AT&T's RBOC affiliates provide tandem functions for many rural LECs. In both of these instances, these connections are provisioned to a large extent with DS-1 and DS-3 trunks. As the industry has seen a drastic reduction in both voice customers (access lines) and minutes (access minutes) the number of trunks associated with these transport mechanisms has essentially remained unchanged nationwide. The reason for this is twofold: (1) carriers would actually incur additional costs associated with re-grooming and consolidating trunks continuously based on traffic volumes – whereas the existing trunks only require maintenance in the event of failure, and (2), the trunks must also be kept in place in the event that volumes increase. This is particularly true for a CEA provider like Aureon, as Aureon has connections to many individual ILECs and CLECs, who generate traffic volumes independent of Aureon. Aureon must essentially provision for maximum capacity at all times, and refrain from removing and re-grooming trunks as traffic volumes decrease, just as AT&T does in its nationwide terminations to the multitude of rural ILECs and CLECs that subtend AT&T's tandem switches. AT&T is fully aware of this process, and as such, its complaint in this area is disingenuous.

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Second, this situation is also true with regard to Aureon's circuit forecast. The vast majority, if not all of the increases in circuit counts for CEA service, are a result of changes and improvements in circuit counting processes and procedures, or, as was the case in prior years, were the product of the need to reconfigure the network either temporarily (i.e., POI moves) or other network management needs, and not, as asserted by AT&T, an effort to maximize allocations or otherwise increase revenue requirements. As Aureon has previously stated, the circuit projections are very conservative in nature due to the tremendous level of uncertainly currently associated with CEA service: regulatory uncertainty, technological uncertainty, and financial uncertainty, all face Aureon at this time. In the *Second Rate Order*, the FCC did not take issue with the level of circuit forecasts, and Aureon has determined that they are appropriate at this time.

III. CONCLUSION

Wherefore, for the foregoing reasons, the FCC should deny AT&T's Petition, and allow Aureon's tariff rate to become effective without suspension or investigation.

Respectfully submitted,

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Date: May 10, 2019

FOR PUBLIC INSPECTION

CERTIFICATE OF SERVICE

I, Monica Gibson-Moore, do hereby certify that on this 10th day of May 2019, copies of the foregoing Reply of Iowa Network Services, Inc. d/b/a Aureon Network Services were sent to the following:

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